



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	05/05/03	Bill No:	ACA 14
Tax:	Local taxes	Author:	Steinberg
Board Position:		Related Bills:	ACA 7 (Dutra) ACA 9 Levine ACA 15 (Wiggins) SCA 2 (Torlakson) SCA 11 (Alarcon)

BILL SUMMARY

This bill, a constitutional amendment that would require statewide majority voter approval prior to going into effect, would authorize local governments, with the approval of 55 percent of the voters, to impose a special tax to fund local infrastructure projects, including general infrastructure, construction of emergency shelters and affordable housing, conservation of agricultural and open-space land, and neighborhood improvements.

Summary of Amendments

Since the previous analysis, this bill was amended to change the allocation formula of revenues generated.

ANALYSIS

Current Law

Under **Article XIII A, Section 4, of the California Constitution**, cities, counties, and special districts, by a two-thirds vote of the voters of such districts, may impose special taxes, except ad valorem taxes on real property or a transactions tax or sales tax on the sale of real property within such districts.

Under **Article XIII C, Section 1, of the California Constitution**, "General tax" means any tax imposed for general governmental purposes. "Special tax" means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund. Under Section 2 of Article XIII C, a local government may impose a general tax by a majority of the voters, and impose a special tax by two-thirds of the voters. Also under Section 2 of Article XIII C, special purpose districts or agencies, including school districts, have no power to levy general taxes.

The **Sales and Use Taxes Law** (Part 1, Division 2, Revenue and Taxation Code), provides that a sales tax is imposed on retailers for the privilege of selling tangible personal property at retail in this state. The use tax is imposed upon the storage, use, or other consumption of tangible personal property purchased in this state. Either the sales tax or the use tax applies with respect to all sales or purchases of tangible personal property, unless specifically exempted.

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The **Bradley-Burns Uniform Local Sales and Use Tax Law** (Part 1.5, Division 2, Revenue and Taxation Code) authorizes counties and cities to impose a local sales and use tax. The local sales tax is imposed on all retailers for the privilege of selling tangible personal property at retail; the local use tax is imposed on the storage, use, or other consumption of tangible personal property purchased from any retailer.

Currently, the statewide sales and use tax and local tax rate is 7.25 percent. Of the 7.25 percent base rate, 6 percent is the state portion and 1.25 percent is the local portion. The components of the statewide base sales and use tax rate of 7.25 percent are as follows:

- 5 percent state tax is allocated to the state's General Fund which is dedicated for state general purposes (Section 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code);
- 0.50 percent state tax is allocated to the Local Revenue Fund which is dedicated to local governments to fund health and welfare programs (Section 6051.2 and Section 6201.2 of the Revenue and Taxation Code);
- 0.50 percent state tax is allocated to the Local Public Safety Fund which is dedicated to local governments to fund public safety services (Section 35 of Article XIII of the California Constitution);
- 1.25 percent local tax of which 1 percent is allocated to city and county operations and 0.25 percent is allocated for county transportation purposes and may be used only for road maintenance or the operation of transit systems (commencing with Section 7200 of the Revenue and Taxation Code).

As previously stated, under the Bradley-Burns Law, the local tax portion is fixed at 1.25 percent. All counties within California have adopted ordinances under the terms of the Bradley-Burns Law and levy the 1.25 percent local tax. Cities are also authorized to impose a sales and use tax rate of up to 1 percent, which is credited against the county rate so that the combined local tax rate under the Bradley-Burns Law does not exceed 1.25 percent.

Under the **Transactions and Use Tax Law** (Parts 1.6 and 1.7, Division 2, Revenue and Taxation Code) counties are authorized to impose a transactions and use tax at a rate of 0.25 percent, or a multiple thereof, if the ordinance imposing such tax is approved by the voters. The maximum combined rate of transactions and use taxes levied in any county may not exceed 1.50 percent, with the exception of the City and County of San Francisco and the County of San Mateo, whose combined rates may not exceed 1.75 and 2 percent, respectively.

Section 7285 of the Transactions and Use Tax Law additionally authorizes counties to levy a transactions and use tax at a rate of 0.25 percent, or multiple thereof, for general purposes with the approval of a majority of the voters. Section 7285.5 permits a board of supervisors of any county to levy a transactions and use tax at a rate of 0.25 percent, or multiple thereof, for specific purposes with the approval of two-thirds of the voters.

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Section 7286.59 authorizes counties to levy a transactions and use tax at a rate of 0.25 percent, or multiple thereof, for purposes of funding public libraries with approval of two-thirds of the voters. Section 7288.1 also authorizes counties to establish a local public finance authority to adopt an ordinance to impose a transactions and use tax at a rate of 0.25 percent, or multiple thereof, for purposes of funding drug abuse prevention, crime prevention, health care services, and public education with the approval of two-thirds of the voters.

As previously stated, Sections 7285, 7285.5, 7286.59, and 7288.1, authorize counties to levy transactions and use taxes under specified conditions. There is no such authority for cities to impose these taxes. Any city desiring to impose a transactions and use tax must seek special enabling legislation from the California legislature. There are 22 cities that have gained authorization to impose transactions and use taxes, 10 of which gained authorization during the 2002 legislative year. To date, only 9 cities (Avalon, Calexico, Clearlake, Clovis, Placerville, Sebastopol, Truckee, West Sacramento, and Woodland) have received voter approval and are levying a transactions and use tax.

The Board performs all functions in the administration and operations of the ordinances imposing the Bradley-Burns Uniform Local Sales and Use Tax and the Transactions and Use Taxes and all local jurisdictions imposing these local taxes are required to contract with the Board for administration of the taxes.

Proposed Law

This bill would add Section 16 to Article XI of the California Constitution to allow a local government, with the approval of 55 percent of its voters, to impose any special tax for the following local infrastructure purposes:

- 1) General infrastructure;
- 2) Conservation of land dedicated to agricultural use, recreational use, or open-space use, and the maintenance and creation of neighborhood parks;
- 3) Construction, acquisition, and rehabilitation of emergency shelters, and the provision of housing, including rental housing, that will be affordable to lower or very low income households for not less than 55 years; and,
- 4) Neighborhood enhancement activities, as described in paragraph (35) of subsection (a) of Section 101 of Title 23 of the United States Code.

The revenues derived from such tax shall be used for the above four purposes in the following percentages: (1) not more than 35 percent allocated for general infrastructure; (2) at least 20 percent allocated for conservation of land dedicated to agricultural use, recreational use, or open-space use, and the construction and maintenance of neighborhood parks; (3) at least 20 percent allocated for construction, acquisition, and rehabilitation of emergency shelters, including affordable rental housing for lower income and very low income households; and (4) at least 25 percent allocated for neighborhood enhancement activities.

With respect to expenditures for general infrastructure purposes, not more than 5 percent of the 35 percent total allocation may be used for the comprehensive revision of

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a local government's general plan. With respect to expenditures for conservation of land dedicated to agricultural use, recreational use, or open-space use, revenues may not be used on activities and projects that are eligible for project-specific mitigation procedures or measures. With respect to expenditures for construction, acquisition, and rehabilitation of emergency shelters including affordable housing, not more than 30 percent of the 20 percent total allocation may be used to provide housing that is affordable to persons of moderate income households, as defined in Section 50093 of the Health and Safety Code.

This bill would also require that, prior to submitting a special tax to the voters, a local government, in conjunction with a local infrastructure citizen's advisory committee appointed by the legislative body of the local government, shall develop an infrastructure plan, and the legislative body of the local government must approve such plan.

This bill would also amend Section 4 of Article XIII A, Section 2 of Article XIII C, and Section 3 of Article XIII D, to conform to the provision that adds Section 16 to Article XI.

This Constitutional amendment must be approved by a majority of California voters. Upon passage in the Senate and Assembly, this bill would be put on the next statewide ballot.

Background

Proposition 62, passed by the voters on November 4, 1986, established new requirements for the adoption of new or higher general and special taxes by local agencies. The measure specifically required that any tax for general purposes be approved by a majority of the voters and that any tax for specific purposes be approved by two-thirds of the voters.

In September 1995, the California Supreme Court upheld Proposition 62's voter approval requirements for local taxes. In the decision, *Santa Clara County Local Transportation Authority v. Guardino* (1995), the California Supreme Court upheld the two-thirds voter approval provision of Proposition 62. This decision raised important implications for other special (transportation) districts that passed transactions and use tax measures by a majority vote. Most of these measures were passed between 1987 and 1991, and contained sunset provisions (the majority were authorized for a 20 year period), which required voter reauthorization if the taxes were to remain in effect. The sunset dates of these taxes range between 2005 to 2011 (See Comment 2).

Additionally, in 1991 and 1992, two court decisions declared that measures passed by the voters of San Diego and Monterey counties, which imposed a special purpose tax, required two-thirds vote for passage. In the decision, *Rider v. County of San Diego* (1991), the California Supreme Court held that the Agency (San Diego County Regional Justice Facility Financing Agency) was a special district and the transactions and use tax imposed was a special tax. Since the Agency was a special district and the transactions and use tax it imposed was a special tax. Consequently, the court ruled that the imposition of the tax violated Proposition 13 which requires approval of the tax by at least two-thirds of the voters.

In the decision, *Monterey Peninsula Taxpayers Association v. County of Monterey*

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(1992), the First District Court of Appeal ruled that a tax adopted under Revenue and Taxation Code Section 7285.5 was in violation of Proposition 13. Section 7285.5 (subsequently amended) had authorized a county to establish an authority for specific purposes that could levy a transactions and use tax with a majority voter approval. The court found that a tax adopted under Section 7285.5, without approval of two-thirds of the voters, violated Proposition 13. Sections 7285 and 7285.5 were amended (AB 1123, Ch. 251, 2001) to add language clarifying the following: (1) Section 7285 authorizes counties to levy a transactions and use tax for general purposes; and (2) Section 7285.5 deletes the necessity of forming an authority to levy a transactions and use tax for special purposes, and requires two-thirds voter approval of a special purpose tax.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author in an effort to lower the voter approval requirement (from two-thirds to a majority) for special taxes to fund local infrastructure projects. According to the author's staff, this bill is similar to SCA 13 (Alarcon) of 2002 and SCA 11 (Alarcon) of 2003. According to the author's staff, ACA 14 would lower the voter approval threshold so that local governments stand a better chance to pass special tax measures to fund community infrastructure improvements. The revenues would be used to fund four key areas: (1) general infrastructure needs (roads, transit, sewer, etc.); (2) community and neighborhood improvements; (3) affordable housing; and (4) conservation of open space and farmland.
2. **Summary of May 5, 2003 amendments.** Amendments to this bill: (1) replace neighborhood improvements with "neighborhood enhancement activities," as described in paragraph (35) of subsection (a) of Section 101 of Title 23 of the United States Code; (2) increased the revenues allocated for general infrastructure from 25 percent to 35 percent; (3) decreased the revenues allocated for conservation of land dedicated to agricultural use, recreational use, and open-space use from 25 percent to 20 percent; and (4) decreased the revenues allocated for construction, acquisition, and rehabilitation of emergency shelters, including affordable rental housing, from 25 percent to 20 percent.
3. **Summary of April 21 amendments.** Amendments to this bill changed the voter approval requirement from a majority vote to a 55 percent approval of the voters. The amendments also provided that: (1) for general infrastructure expenditures, not more than 5 percent of the 25 percent total allocation of the tax revenues would be used for the comprehensive revision of a local government's general plan; and, (2) for construction, acquisition, and rehabilitation of emergency shelters including affordable housing, not more than 30 percent of the 25 percent total allocation of the tax revenues would be used to provide housing to persons of moderate income households, as defined in the Health and Safety Code.
4. **Currently, there are 17 counties that impose a county-wide transactions and use tax for transportation purposes.** Many of these counties' transactions and use tax measures were approved by a majority vote. Of the 17 counties, 14 had measures that contained sunset provisions. The sunset dates of these taxes range from 2005 to 2011, with the exception of Alameda County. The Alameda County

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Transportation Authority transactions and use tax expired on March 31, 2002. Voters in Alameda County approved (by a two-thirds vote) the Alameda County Transportation Improvement Authority transactions and use tax effective April 1, 2002, with a sunset date of March 31, 2022. Voters of Riverside County approved (by a two-thirds vote) an extension of the existing Riverside County Transportation Commission transactions and use tax from June 30, 2009, to June 30, 2039.

5. **This bill could change the voter approval requirement for local taxes.** This bill would amend the state Constitution to require a majority vote to pass special taxes. This Constitutional amendment must be approved by a majority of California voters before the new voter-approval threshold could go into effect.
6. **Related Legislation.** Five bills introduced in 2003 would place on the ballot a constitutional amendment to change the voter approval requirement for local taxes. **ACA 7 (Dutra)** would constitutionally authorize local transportation agencies and regional transportation agencies, with the approval of 55 percent of the voters in the jurisdiction, to impose a transactions and use tax for a period of 20 to 30 years, as specified, at a rate of 0.50 percent to be used exclusively for transportation purposes. **ACA 9 (Levine)** would constitutionally authorize a city, county, or special district to impose a qualified special tax, as defined, to fund capital infrastructure construction projects, with the approval of a majority of the voters. **ACA 15 (Wiggins)** would constitutionally authorize local governments, with the approval of a majority of the voters, to impose a special tax to fund local public safety departments, as defined.
SCA 2 (Torlakson) would constitutionally authorize counties, cities and counties, local transportation authorities, and regional transportation agencies, with the approval of a majority of the voters in the jurisdiction, to impose a transactions and use tax to be used exclusively for funding transportation projects and services and related smart growth planning. The Board voted to support SCA 2. **SCA 11 (Alarcon)** would constitutionally authorize local governments, with the approval of a majority of the voters, to impose a special tax or to incur indebtedness in the form of general obligation bonds to fund infrastructure projects, including construction of affordable housing for very low, low, and moderate income, transportation enhancement activities, acquisition of land for open-space use, and other general infrastructure needs.

COST ESTIMATE

This bill by itself would not result in additional costs to the Board. Under the Uniform Local Sales and Use Tax Law and the Transactions and Use Tax Law, counties are required to contract with the Board, and reimburse the Board for its preparation costs to administer the ordinance as well as the costs for the Board's ongoing services in actually administering the ordinance.

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REVENUE ESTIMATE

To the extent that this bill makes it easier for local governments to impose or extend local taxes, this bill, if approved statewide, would increase local government revenues. The revenue impact would be specific to each local government that approved a tax.

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